

LOW-INCOME HOUSING CREDIT PROGRAM

QUALIFIED CONTRACT REQUEST GUIDELINES

- I. Qualified Contract Process. Section 42 of the Internal Revenue Code of 1986, as amended (“the Code”), contains the basic provisions for handling Qualified Contract requests. However, many provisions have been left to the discretion of the housing credit agencies administering the Low-Income Housing Credit (“LIHC”) Program. The purpose of these guidelines is to set forth the policies and procedures owners of developments with federal low-income housing tax credits (“Owner(s)”) under the Tennessee Housing Development Agency’s (“THDA”) LIHC Program must follow in order to request participation in the Qualified Contract Process.
- II. Ineligibility to Apply for LIHC. An application for LIHC will be ineligible if any individual currently involved with the developer, development entity, owner, ownership entity, related parties or individuals either directly or indirectly involved with the developer, ownership entity, or related parties (whether formed or to be formed) identified in the Initial Application for LIHC is currently participating in the Qualified Contract Process for another development in Tennessee.
- III. Termination of the Extended Use Period.
 1. THDA and Owner enter into an extended low-income housing commitment agreement for a term defined as the **Extended Use Period**. This agreement is the Land Use Restrictive Covenant (“LURC”), which is recorded to encumber the development.
 2. Some owners may have postponed their right or waived their right to participate in the Qualified Contract Process for points under the Qualified Allocation Plan (“QAP”) applicable to the development.
 3. If Owner has not postponed or waived their right to participate in the Qualified Contract Process, the Extended Use Period terminates if, after the 14th year of the compliance period:
 - i. Owner submits a Notice of Intent to participate in the Qualified Contract Process;
 - ii. Owner is eligible to participate in the Qualified Contract Process;
 - iii. Owner complies with all requirements of the Qualified Contract Process; and
 - iv. THDA’s marketing of the development, within the **One-year Period**, does not result in an offer from a prospective buyer to purchase Owner’s interest in the low-income portion of the tax credit development at or above the Qualified Contract price and to continue to operate such as a qualified low-income development.
- IV. Definitions.
 1. **Compliance Period.** The period beginning January 1st of the first year of the **Credit Period** and ending the end of the fifteenth year of the Compliance Period. Owner may have extended the Compliance Period for points under the QAP applicable to the development.
 2. **Credit Period.** The election of the start of the Credit Period is made on a building-by-building basis. Owner can choose to start the Credit Period the year the building is placed in service or defer to the next calendar year.
 3. **Extended Use Period.** Begins on the first day of the Compliance Period and ends thirty years thereafter or as otherwise specified in the LURC.
 4. **One-year Period.**
 - i. The period of time during which THDA shall have the right, but not the obligation, to market the

development to find a prospective buyer to offer to purchase Owner's interest in the low-income portion of the development at or below the Qualified Contract price pursuant to the Code.

- ii. The One-year Period starts as outlined under Section VI.5.
- iii. See Section VI.6. and IX. for what can cause the One-year Period to suspend.
- iv. See Section VI., IX., and X. for termination and expiration of the One-year Period.

V. Notice of Intent. If Owner has not waived their right to participate in the Qualified Contract Process, then Owner may provide THDA with a Notice of Intent to participate in the process, but not until the year before the end of the Compliance Period, as it is defined in the LURC for the development.

1. The Notice of Intent shall be on the form attached to these guidelines. It must contain original signatures and must include the following documentation and materials:
 - i. nonrefundable processing fee in the amount of \$300.00, paid to THDA by wire transfer according to the directions at the end of these guidelines;
 - ii. a copy of the recorded LURC and any recorded amendments to the LURC;
 - iii. IRS Form 8609 with Part II completed and Schedule A for each building in the development as submitted to the Internal Revenue Service (IRS) during the first year of the Compliance Period, including, for developments with multiple buildings, the date each building was placed in service and the first year in which it claimed credits;
 - iv. documentation of a right of first refusal, if applicable;
 - v. documentation of any additional affordability restrictions imposed by HUD, USDA, other federal, local or state funding, if applicable; and
 - vi. other documentation and materials as deemed necessary by THDA in its sole discretion.
2. Within thirty (30) calendar days of receipt of the Notice of Intent, THDA shall review the packet and provide Owner with a letter stating that:
 - i. all documentation has been received and Owner is eligible to submit a Qualified Contract Request;
 - ii. additional information or documentation is necessary; or
 - iii. the development is not eligible to request a qualified contract.
3. THDA has the sole administrative discretion to conclude that Owner's Notice of Intent lacks essential information. If THDA determines that additional submissions of documentation or material are necessary, Owner must provide such to THDA within 14 calendar days of a request by THDA.
 - i. If Owner fails to provide THDA the requisite documentation or material before the 14-day deadline, as determined by THDA in its sole discretion, THDA will send notice denying Owner's participation in the Qualified Contract Process, no additional Notices of Intent or Qualified Contract Requests for the same development will be accepted, and the LURC will continue to apply to the development for the term specified in the LURC.
 - ii. THDA will review any subsequent submissions of requested information within fourteen (14) calendar days of receipt, excluding holidays.
4. THDA's determination of eligibility will not obligate Owner to submit a Qualified Contract Request.
5. If Owner voluntarily withdraws a Notice of Intent or THDA denies a Notice of Intent because it is

premature, Owner may subsequently resubmit a Notice of Intent in accordance with these guidelines, but must repay the nonrefundable processing fee in the amount of \$300.00.

6. Submission and/or approval of a Notice of Intent does not start the One-year Period.

VI. Qualified Contract Request.

1. If Owner is deemed eligible to continue the process, Owner shall submit all documents and materials required for a complete Qualified Contract Request to THDA via UPS or FedEx within sixty (60) calendar days of THDA's issuance of the letter determining eligibility, including a Qualified Contract Request in the form attached to these guidelines, with original signatures, and with the following materials and documentation:
 - i. fully completed Qualified Contract Worksheets A - D, together with such documents and additional information indicated on such worksheets attached to these guidelines (collectively, the "Worksheets");
 - ii. documentation to allow a prospective buyer to have sufficient information upon which to make a reasonable decision regarding purchase of the development:
 - 1). a thorough narrative description of the development, including all amenities, suitable for familiarizing prospective buyers with the development;
 - 2). a detailed set of photographs of the development, including the interior and exterior of representative apartment units, common areas, and buildings and the development grounds. Digital photographs should be included so that they may be easily displayed on THDA's website;
 - 3). any market studies or appraisals Owner has obtained; and
 - 4). such other documentation and material as determined by THDA, in its sole discretion, necessary to allow a prospective buyer to have sufficient information upon which to make a reasonable decision regarding purchase of the development; and
 - iii. any other documentation or material that THDA determines, in its sole discretion, is needed to determine a Qualified Contract Amount.
2. If Owner fails to provide THDA the requisite documentation or material before the 60-day deadline, as determined by THDA in its sole discretion, THDA will send notice denying Owner's participation in the Qualified Contract Process, no additional Notices of Intent or Qualified Contract Requests for the same development will be accepted, and the LURC will continue to apply to the development for the term specified in the LURC.
3. THDA will review the first submission of materials within thirty (30) calendar days of receipt and any additional submissions that are necessary within fourteen (14) calendar days of receipt, excluding holidays.
4. If THDA determines in its sole discretion that additional submissions of documentation or material are necessary, Owner must provide such to THDA via UPS or FedEx within fourteen (14) calendar days of a request by THDA.
 - i. If Owner fails to provide THDA the requisite documentation or material before the 14-day deadline, as determined by THDA in its sole discretion, THDA will send notice denying Owner's participation in the Qualified Contract Process, no additional Notices of Intent or Qualified Contract Requests for the same development will be accepted, and the LURC will continue to apply to the development for the term specified in the LURC.
5. Once THDA receives a complete Qualified Contract Request, along with all requisite documentation and

material needed to determine the Qualified Contract Amount, in THDA's sole discretion, then THDA will notify Owner that the One-year Period has started and that a nonrefundable Qualified Contract Request processing fee, in the requisite amount as outlined below, must be paid to THDA by wire transfer according to the directions at the end of these guidelines within fourteen (14) calendar days of such notice:

- i. \$15,500.00 for developments with 1 to 50 units;
 - ii. \$16,000.00 for developments with 51 to 100 units;
 - iii. \$16,500.00 for developments with 101 to 300 units; and
 - iv. \$17,000.00 for developments with 301 or more units.
6. If Owner fails to submit the required fee to THDA within the fourteen (14) calendar days, then the One-year Period will suspend until payment is received. If the payment is not received within sixty (60) days, then the Qualified Contract Process will be terminated and the LURC will continue to apply to the development for the term specified in the LURC.
 7. Owner may voluntarily withdraw a Qualified Contract Request up to the point that the Qualified Contract Request processing fee is submitted and may subsequently submit a new Notice of Intent with an additional \$300 nonrefundable processing fee. However, if Owner voluntarily withdraws a Qualified Contract Request once the nonrefundable Qualified Contract Request processing fee is submitted, then the fee is forfeited and no other Notice of Intent may be submitted and the LURC will continue to apply to the development for the term specified in the LURC.

VII. Qualified Contract Amount.

1. THDA will obtain an appraisal of the development and engage a Certified Public Accountant to determine the Qualified Contract Amount, based on the documentation and material required in connection with the Qualified Contract Request and any other documentation and material THDA may request, in its sole discretion, in accordance with the federal formula contained in Section 42(h)(6)(F)&(G) of the Code.
2. THDA shall provide Owner with notice of the Qualified Contract Amount within forty-five (45) calendar days, excluding holidays, of a complete Qualified Contract Request package, as determined by THDA in its sole discretion.
3. THDA's determination of the Qualified Contract Amount is definitive.

VIII. Marketing the Development.

1. Following THDA's determination of the Qualified Contract Amount, THDA will market the development in good faith for the remainder of the One-year Period.
2. THDA shall have the right to engage real estate agents and use any methods available to THDA to market the development for sale at the Qualified Contract Amount.
3. THDA will utilize its website, and any other means THDA deems appropriate, to market the development.
4. If a sale of the development results, Owner shall pay commissions to the real estate agent in the amount of:
 - i. 4.00% if the Qualified Contract Amount is between \$0 and \$5,000,000.00;
 - ii. 1.50% if the Qualified Contract Amount is between \$5,000,000.01 and \$7,500,000.00;
 - iii. 1.00% if the Qualified Contract Amount is between \$7,500,000.01 and \$12,500,000.00;
 - iv. 0.65% if the Qualified Contract Amount is between \$12,500,000.01 and \$17,500,000.00; and

- v. 0.30% if the Qualified Contract Amount is between \$17,500,000.01 and \$27,500,000.00.

IX. Qualified Contract.

1. Marketing materials will direct a prospective buyer to make a purchase offer either through a realtor or by contacting THDA's Program Compliance Manager for the Multifamily Programs Division ("Compliance Manager").
2. During the One-year Period, Owner shall immediately notify THDA of all purchase offers Owner personally receives through the end of the last day of the One-year Period, including the date and terms, whether the offer is for an amount equal to or greater than the Qualified Contract Amount or not. This includes any transfer or purchase of any interest in the ownership entity. Owner must also immediately provide THDA with any correspondence from a prospective buyer and copy THDA in correspondence from Owner to the prospective buyer. If Owner fails to provide THDA with any of the above within three (3) business days of such occurrence, the Qualified Contract Process will terminate and the LURC will continue to apply to the development for the term specified in the LURC.
3. Owner shall copy THDA on all correspondence between Owner and the prospective buyer through THDA's Program Compliance Manager for the Multifamily Programs Division.
4. If a prospective buyer offers to purchase the development for an amount equal to or greater than the Qualified Contract Amount, even if the offer is received at the last second of the last day of the One-year Period, then the One-year Period will suspend as Owner and the prospective buyer negotiate.
5. If Owner fails to respond to the prospective buyer within fourteen (14) calendar days, the Qualified Contract Process terminates and the LURC will continue to apply to the development for the term specified in the LURC.
6. If the prospective buyer fails to respond to Owner within fourteen (14) calendar days, then the One-year Period restarts unless and until the prospective buyer responds. Once the prospective buyer responds, the One-year Period suspends again, unless the One-year Period has expired.
7. Once Owner and the prospective buyer reach an agreement, Owner shall enter into a purchase agreement, which shall allow the prospective buyer a reasonable period of time to undertake normal, additional, and customary due diligence prior to closing.
 - i. Once the purchase agreement is executed, the possibility of terminating the LURC is removed forever and the development remains bound by the provisions of the LURC, unless the closing of the Qualified Contract fails due to the prospective buyer terminating the Qualified Contract, which, in such case will restart the One-year Period.
 - ii. If Owner does not enter into the Qualified Contract, or fails to act upon or otherwise comply with the requirements of the Qualified Contract, or fails to close the sale under the Qualified Contract for any reason other than the prospective buyer terminating the Qualified Contract, the LURC will continue to apply to the development for the term specified in the LURC, and Owner will have no further opportunity to opt out or terminate the LURC.
8. If Owner and the prospective buyer are unable to reach an agreement or Owner rejects an offer from a prospective buyer, but the offer from the perspective buyer was for an amount equal to or greater than the Qualified Contract Amount, then the LURC will continue to bind the development for the remainder of the term specified in the LURC and Owner will have no further opportunity to opt out or terminate the LURC. Owner is not required to accept an offer, however, THDA's only obligation under 42(h)(6)(E)(i)(II) is to find a buyer willing to purchase the property at or above the Qualified Contract Amount.
9. If Owner accepts an offer that is not a Qualified Contract, including an offer to transfer or purchase any interest in the ownership entity, THDA will consider the Qualified Contract Request withdrawn. The development will remain subject to the LURC for the full term of the LURC. No further Qualified Contract

Request may be made for such development by Owner or any subsequent purchaser.

10. Only prospective buyers who are not currently subject to any ban associated with participating in any of THDA's housing programs or in any federal housing program and who demonstrate the experience and capacity to manage the development in accordance with Section 42, the Regulations, and the relevant THDA QAP are eligible. If THDA finds that a prospective buyer is ineligible, THDA will notify the buyer and Owner and the One-year Period will resume.
11. In connection with presenting a Qualified Contract, THDA may request, and upon such request Owner shall be obligated to provide, at Owner's sole expense, additional documentation a prospective buyer may deem necessary to have sufficient information upon which to make a reasonable decision regarding purchase of the development, including without limitation, the following documentation and material:
 - i. a copy of the most recent 12 months and year to date information for Owner's current fiscal year of operating statements for the development which will fairly apprise a prospective buyer of the development's operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio;
 - ii. a current and complete rent roll and rent rolls covering the most recent twelve (12) months;
 - iii. copies of all current ground leases, if any portion of the development is on leased land;
 - iv. a physical needs assessment of the development;
 - v. a current title report;
 - vi. a current Phase I Environmental Site Assessment;
 - vii. a current certificate of insurance showing sufficient hazard insurance on the development;
 - viii. service contracts for any services, including but not limited to social services for the tenants, utilities, trash collection, extermination, appliance or HVAC servicing, laundry, etc.;
 - ix. any market studies or appraisals Owner has obtained;
 - x. current annual budget;
 - xi. all tenant income certifications, all tenant leases, and all other Section 42 compliance records;
 - xii. current utility allowance calculations;
 - xiii. updates of any other documents previously provided; and
 - xiv. such other documentation and material necessary, as determined by THDA, in its sole discretion, to allow a prospective buyer to have sufficient information upon which to make a reasonable decision regarding purchase of the development.

X. Termination and Expiration of One-year Period.

1. THDA may terminate the One-year Period if, in its sole discretion, THDA determines there has been non-cooperation or excessive delays by Owner. Upon such termination, no additional Notices of Intent or Qualified Contract Requests may be submitted for the development and the LURC will continue to apply to the development for the term specified in the LURC.
2. If the One-year Period ends without an offer from a prospective buyer to purchase the development for an amount equal to or greater than the Qualified Contract Amount, THDA will provide a release of the LURC to Owner.

- i. Notwithstanding such a release, existing low-income residents will continue to have the right to rent at the restricted rent levels and may not be evicted or have their tenancy terminated for other than good cause for a period of three years following the date of the release pursuant to Section 42(h)(6)(E)(ii) of the Code and Section 1.42-18(a)(iv) of the Regulations.
- ii. During this three-year period, Owner shall submit an annual report to THDA, in a form and manner determined by THDA, in its sole discretion, showing all low-income households that occupied a unit at the date of the release, the respective tenant-paid rent, utility allowance, and move-out date, if applicable, along with a certification that no low-income residents have been evicted or had tenancy terminated for other than good cause.
- iii. If a development is sold, including a sale or change in ownership interest, during the three-year period from the date of the release, Owner shall notify THDA of the transfer and shall provide such documentation and material as THDA may request.

XI. Amendments. THDA may amend these guidelines at any time in its sole discretion. Owner will be subject to the version of the Qualified Contract Request Guidelines in existence at the time of THDA's receipt of the Notice of Intent.

XII. Questions and Submissions.

1. Questions regarding any aspect of this process should be directed to Chuck O'Donnell at 615.815.2215 or CODonnell@thda.org.
2. Submission of Notices of Intent, Qualified Contract Requests, and all other required documentation should be sent via UPS or Fedex to Program Compliance Manager, Multifamily Programs Division, Tennessee Housing Development Agency, 502 Deaderick St., 3rd Floor, Nashville, TN 37243.

XIII. Wire Instructions.

ABA:	064000059
BNF:	THDA Clearing Account
BNF A/C:	151203673398
BNF ADDRESS:	Andrew Jackson Bldg. 3rd Floor 502 Deaderick Street Nashville, TN 37243
OBI:	Tax Credit/Bond Application Fees + TN ID Number(s)